

1 HB318
2 216991-1
3 By Representatives Isbell, Reynolds, Whitt and Moore (P)
4 RFD: Commerce and Small Business
5 First Read: 09-FEB-22

8 SYNOPSIS: This bill would require high-volume
9 third-party sellers of certain consumer products on
10 online marketplaces to make certain disclosures.
11 This bill would also provide the Attorney
12 General with authority to obtain certain civil
13 remedies for violations.

15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to online marketplaces; to require certain
20 disclosures to be made by high-volume third-party sellers of
21 certain consumer products on online marketplaces; and to
22 provide for civil remedies.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. As used in this act, the following terms
25 shall have the following meanings:

26 (1) CONSUMER PRODUCT. Any tangible personal property
27 that is distributed in commerce and that is normally used for

1 personal, family, or household purposes, including, but not
2 limited to, any property intended to be attached to or
3 installed in any real property without regard to whether it is
4 attached or installed.

5 (2) HIGH-VOLUME THIRD-PARTY SELLER. A participant in
6 an online marketplace that is a third-party seller and, in any
7 continuous 12-month period during the previous 24 months, that
8 has entered into 200 or more discrete sales or transactions of
9 new or unused consumer products of an aggregate total of five
10 thousand dollars (\$5,000) or more in gross revenue in this
11 state made through the online marketplace and for which
12 payment was processed by the online marketplace or through a
13 third party.

14 (3) ONLINE MARKETPLACE. Any person or entity that
15 operates a consumer-directed electronically based or accessed
16 platform that does all of the following:

17 a. Includes features that allow for, facilitate, or
18 enable third-party sellers to engage in the sale, purchase,
19 payment, storage, shipment, or delivery of a consumer product
20 within this state.

21 b. Is used by one or more third-party sellers.

22 c. Has a contractual or similar relationship with
23 consumers governing their use of the platform to purchase
24 consumer products.

25 (4) SELLER. A person who sells, offers to sell, or
26 contracts to sell a consumer product through an online
27 marketplace's platform.

1 (5) THIRD-PARTY SELLER. Any seller, independent of
2 an online marketplace, that sells, offers to sell, or
3 contracts to sell a consumer product in this state through an
4 online marketplace. The term does not include, with respect to
5 an online marketplace, any of the following:

6 a. A seller that operates the online marketplace's
7 platform.

8 b. A business entity that has all of the following:

9 1. Made available to the general public the entity's
10 name, business address, and working contact information.

11 2. An ongoing contractual relationship with the
12 online marketplace to provide the online marketplace with the
13 manufacture, distribution, wholesaling, or fulfillment of
14 shipments of consumer products.

15 3. Provided to the online marketplace the identity
16 information required under Section 2(a) that has been verified
17 in accordance with Section 2(d).

18 (6) VERIFY. To confirm information and documents
19 provided to an online marketplace, pursuant to this act,
20 through the use of one or more methods that enable an online
21 marketplace to reliably determine that any information and
22 documents provided are valid, correspond to the seller or an
23 individual acting on the seller's behalf, are not
24 misappropriated, and are not falsified.

25 Section 2. (a) An online marketplace shall require
26 any high-volume third-party seller on its platform, not later

1 than 10 days after qualifying as such, to provide all of the
2 following information to the online marketplace:

3 (1) A bank account number or, if the high-volume
4 third-party seller does not have a bank account, the name of
5 the payee for payments issued by the online marketplace to the
6 high-volume third-party seller. This information may be
7 provided by the high-volume third-party seller to the online
8 marketplace or to a third party contracted by the online
9 marketplace to maintain the information; provided, however,
10 that the online marketplace ensures that it can obtain the
11 information on demand from the third party.

12 (2) Contact information, which shall include either
13 of the following:

14 a. If the high-volume third-party seller is an
15 individual, the individual's name.

16 b. If the high-volume third-party seller is not an
17 individual, either of the following:

18 1. A copy of a valid government issued
19 identification for an individual acting on behalf of a seller
20 that includes the individual's name.

21 2. A copy of a valid government issued record or tax
22 document that includes the business name and physical address
23 of the high-volume third-party seller.

24 (3) A business tax identification number or, if the
25 high-volume third-party seller does not have a business tax
26 identification number, a taxpayer identification number.

1 (4) A current working email address and telephone
2 number for the high-volume third-party seller.

3 (b) An online marketplace shall do both of the
4 following for each high-volume third-party seller on its
5 platform:

6 (1) Periodically, but not less than annually,
7 provide notification of the requirement to keep current the
8 information required under subsection (a).

9 (2) Require the high-volume third-party seller, not
10 later than 10 days after receiving the notice provided under
11 subdivision (1), to submit electronic certification of either
12 of the following:

13 a. That there have been changes to the information
14 required to be provided under subsection (a). If there have
15 been changes to the information required to be provided, the
16 high-volume third-party seller shall update the information in
17 its certified response.

18 b. That there have been no changes to the
19 information required to be provided under subsection (a).

20 (c) In the event that a high-volume third-party
21 seller does not provide the information or certification
22 required under subsection (a) or (b), the online marketplace,
23 after providing the seller with written or electronic notice
24 and an opportunity to provide the information or certification
25 not later than 10 days after the issuance of the notice, shall
26 suspend any future sales activity of the seller until the
27 seller provides the required information or certification.

1 (d) (1) An online marketplace shall verify both of
2 the following:

3 a. The information and documents required to be
4 provided under subsection (a) have been received not later
5 than 10 days after receipt of notification under subdivision
6 (b) (1).

7 b. Any change in the information or to the documents
8 have been received not later than 10 days after being notified
9 of the change by a high-volume third-party seller under
10 subsection (b).

11 (2) If a high-volume third-party seller provides a
12 copy of a valid government issued tax document, any
13 information contained within the tax document shall be
14 presumed to be verified as of the date the document was
15 issued.

16 Section 3. (a) Except as provided in subsection (b),
17 an online marketplace shall require any high-volume
18 third-party seller with an aggregate total of twenty thousand
19 dollars (\$20,000) or more in annual gross revenues on its
20 platform to provide to the online marketplace and disclose to
21 consumers in a clear and conspicuous manner all of the
22 following identity information:

23 (1) The full name of the high-volume third-party
24 seller, including the company name or the name by which the
25 seller or company operates on the online marketplace.

26 (2) The physical address of the high-volume
27 third-party seller.

1 (3) Contact information for the high-volume
2 third-party seller that will allow for direct unhindered
3 communication with the seller by consumers of the online
4 marketplace, including one or more of the following:

- 5 a. A current working telephone number.
- 6 b. A current working email address.
- 7 c. Other means of direct electronic messaging.

8 (4) Whether the high-volume third-party seller used
9 a different seller to supply the product to the consumer upon
10 purchase and, upon the request of an authenticated purchaser,
11 the information described in subdivisions (1) through (3)
12 relating to the different seller that is different than the
13 high-volume third-party seller listed on the product listing
14 page prior to purchase. The identity information of the
15 different seller shall be provided on the product listing
16 page, directly, via hyperlink, or, after the purchase is
17 finalized, in the order confirmation message or other document
18 or communication made to a consumer and in the consumer's
19 account transaction history.

20 (b) Upon the request of a high-volume third-party
21 seller, an online marketplace may provide for partial
22 disclosure of the identity information required under
23 subsection (a) if the high-volume third-party seller certifies
24 to the online marketplace that any of the following apply:

25 (1) The seller does not have a business address and
26 only has a residential street address, or has a combined
27 business and residential address. If this subdivision is

1 applicable, the online marketplace shall do both of the
2 following:

3 a. Disclose only the country and, if applicable, the
4 city and state in which the seller resides.

5 b. Inform consumers that there is no business
6 address available for the high-volume third-party seller and
7 that consumer inquiries should be submitted to the seller by
8 telephone, email, or other means of electronic messaging
9 provided to the seller by the online marketplace.

10 (2) The seller is a business that has a physical
11 address for product returns. If this subdivision is
12 applicable, the online marketplace shall disclose the seller's
13 physical address for product returns.

14 (3) The seller does not have a telephone number
15 other than a personal telephone number. If this subdivision is
16 applicable, the online marketplace shall inform consumers that
17 there is no telephone number available for the seller and that
18 consumer inquiries should be submitted to the seller's email
19 address or other means of electronic messaging provided to the
20 seller by the online marketplace.

21 (c) (1) Subject to subdivision (3), an online
22 marketplace shall suspend any future sales activity of a
23 high-volume third-party seller if the online marketplace
24 becomes aware of either of the following:

25 a. That the high-volume third-party seller has made
26 a false representation to the online marketplace in order to

1 justify the provision of a partial disclosure of the identity
2 information under subsection (b).

3 b. That the high-volume third-party seller that has
4 requested and received a provision for a partial disclosure
5 has not provided responsive answers within a reasonable time
6 frame to consumer inquiries submitted to the seller by
7 telephone, email, or other means of electronic messaging
8 provided to the seller by the online marketplace.

9 (2) Prior to any suspension under this subsection,
10 the online marketplace shall provide the high-volume
11 third-party seller with written or electronic notice and an
12 opportunity to respond not later than 10 days after the
13 issuance of the notice.

14 (3) A high-volume third-party seller may avoid
15 suspension under this subsection by consenting to the
16 disclosure of the identity information required under
17 subsection (a).

18 (d) If a high-volume third-party seller does not
19 comply with the requirements to provide and disclose
20 information under this section, then, after providing the
21 seller with written or electronic notice and an opportunity to
22 provide or disclose the information not later than 10 days
23 after the issuance of the notice, the online marketplace shall
24 suspend any future sales activities of the seller until the
25 seller complies with the requirements.

26 Section 4. An online marketplace shall disclose to
27 consumers in a clear and conspicuous manner, on the product

1 listing of any high-volume third-party seller, a reporting
2 mechanism that allows for electronic and telephonic reporting
3 of suspicious marketplace activity to the online marketplace.

4 Section 5. (a) Information or documents collected
5 solely to comply with the requirements this act shall not be
6 used for any other purpose unless required by law.

7 (b) An online marketplace shall implement and
8 maintain reasonable security procedures and practices,
9 including administrative, physical, and technical safeguards,
10 appropriate to the nature of the data and the purposes for
11 which the data will be used, to protect the information or
12 documents collected to comply with the requirements of this
13 article from unauthorized use, disclosure, access,
14 destruction, or modification.

15 Section 6. (a) If the Attorney General has reason to
16 believe that any online marketplace has violated or is
17 violating this act and the violation affects one or more
18 residents of this state, the Attorney General may bring a
19 civil action in any appropriate court to do any of the
20 following:

21 (1) Enjoin the violation by the defendant.

22 (2) Enforce compliance with this act.

23 (3) Obtain damages, restitution, or other
24 compensation on behalf of the residents of this state.

25 (4) Obtain other remedies permitted under state law.

26 (b) Nothing in this act shall be construed to
27 prohibit any district attorney, law enforcement officer,

1 official, or agency of this state from initiating or
2 continuing any proceeding in a court against an online
3 marketplace for a violation of any other civil law or a
4 criminal law of this state.

5 Section 7. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.